

March 19, 2003

DRAFT OF PROPOSED REGULATORY CHANGES FOR GLASS CONTAINER AND FIBERGLASS MINIMUM CONTENT.

THESE PROPOSED REGULATORY CHANGES ARE NOT A FORMAL REQUEST FOR REGULATORY CHANGE, BUT ARE FOR DISCUSSION ONLY TO OBTAIN FEEDBACK FROM INDUSTRY FOR A POSSIBLE FUTURE FORMAL REQUEST FOR REGULATORY CHANGE.

Legend:

Underline: Proposed Additions

~~Strikeout:~~ Proposed Deletions

SUBCHAPTER 2. GENERAL REQUIREMENTS

Article 4. General Accounting Requirements

§2070 APPLICABILITY.

To the extent that a person performs the functions of more than one entity (such as beverage manufacturer and distributor or recycling center and processor) governed by these regulations, such person shall separately comply with the applicable subchapter and article for each function. The provisions of this article apply to every person subject to regulation under the Act or Division 12.9 of the Public Resources Code, including but not limited to container manufacturers, fiberglass manufacturers, beverage manufacturers, distributors, recycling centers, and processors, unless specifically stated otherwise.

Authority: Section 11342.2, Government Code; Sections 14530.5(b) and 14536, Public Resources Code. Reference: Sections 14530.5, ~~and 14536~~, 19511, and 19520, Public Resources Code.

§2075 EXAMINATIONS.

(a) The Division or persons authorized by it shall conduct examinations of curbside programs, recycling centers, processors, beverage manufacturers, distributors, container manufacturers, fiberglass manufacturers, and any other person subject to audit or examination pursuant to the Act. Nothing herein shall limit the authority of the Division pursuant to the Act or Division 12.9 of the Public Resources Code to audit, examine, review, inspect, or otherwise determine the compliance of any person with the Act, Division 12.9 of the Public Resources Code, or this Chapter.

(b) An examination is a review, of any books, records, accounts, or on-site operations, for the purpose of determining compliance with the Act, Division 12.9 of the Public Resources Code, or this Chapter. Such reviews may include observation and inspection of transactions, verification of measurements, counts, weights or statistics, or other examination procedures regarding payments, transfers or other activities related to the Act or Division 12.9 of the Public Resources Code. Nothing herein shall in any way limit the Division's ability to carry out its responsibilities pursuant to the Act or Division 12.9 of the Public Resources Code.

Authority: Section 11342.2, Government Code; Sections 14530.5(b) and 14536, Public Resources Code. Reference: Sections 14537, 14541(c), 14549.1, 14552, ~~and 14553(b)~~, and 19521, Public Resources Code.

§2080 PROPRIETARY AND OTHER RECORDS EXEMPT FROM DISCLOSURE.

(a) All information obtained by the Division pursuant to this Chapter may be disclosed to the public upon request unless the information is exempt from such disclosure pursuant to the Act or Division 12.9 of the Public Resources Code, the Public Records Act, or other applicable law. Information exempt from public disclosure includes, but is not limited to, proprietary information concerning specific sales or purchases; market reports; personal financial data; or other information as permitted by Section 6255 of the Public Records Act (Govt. Code §6255).

(b) Upon receipt of a written request for records pertaining to information obtained by the Division pursuant to this Chapter, the Division shall determine whether the requested information may be exempt from disclosure. The Division shall notify the requesting party of its determination within 10 days of the receipt of the written request as required by the Public Records Act (Government Code Section 6256). If the Division determines that the information is not exempt from disclosure, it shall promptly provide it to the requesting party in accordance with the procedures of the Public Records Act.

(c) This subsection does not preclude the Department from compiling aggregate information for use in a final public document.

Authority: Section 11342.2, Government Code; Sections 14530.5(b) and 14536, Public Resources Code. Reference: ~~Section~~ Sections 14551(b), and 19533, Public Resources Code; Sections 6250 through 6267, Government Code.

§2085 RECORDS.

Any records which persons are required to maintain pursuant to these regulations shall be kept in accordance with the following provisions:

(a) Location of Records.

(1) Records of certified recycling centers and certified processors shall be kept at the business address identified in the application for certification pursuant to section 2045(a)(2) or (a)(6) of these regulations. Records may be moved to and kept at a different location if notice is given to the Division pursuant to subsection (3) below.

(2) Container manufacturers in this state, beverage manufacturers in this state, fiberglass manufacturers selling fiberglass insulation in this state, and distributors shall give the Division notice of the location of their records ~~on or before October 1, 1987~~. Notice of any change in location, or intent to establish a new location of such records, shall be provided pursuant to subsection (3) below.

(3) Notice shall mean written notice stating the full name of the person; certification number where applicable; complete present and future addresses of the location of the records, and name and phone number of the individuals responsible for such records. Such notice shall be submitted no less than 10 days prior to any change in location or establishment of a new location.

(4) Records of dropoff or collection programs and community service programs shall be kept at the address identified in the application for certification pursuant to section 2055(a)(1) of these regulations.

(b) Record Retention Period. Records shall be maintained for at least five years following their preparation.

(c) Suitability for Examination. All records maintained pursuant to this chapter shall be suitable for examination. Records satisfy this standard when they are prepared and retained in accordance with generally accepted accounting principles and good business practice.

Authority: Section 11342.2, Government Code; Sections 14530.5(b) and 14536, Public Resources Code.
 Reference: Sections 14537, 14538, 14539, ~~and~~ 14552, and 19521, Public Resources Code.

§2090 REPORTS, NOTICES AND CLAIMS SUBMITTED TO THE DIVISION.

(a) Except where specifically provided otherwise, any reports, notices, and claims prepared pursuant to this chapter shall be prepared and submitted in the form designated by the Division. Only reports, notices, and claims in such form and bearing an original signature pursuant to subsection 2090(d)(4) shall be acceptable. The Division shall provide reporting forms to any person upon request.

(b) In lieu of submitting information on report forms provided by the Division, program participants who use Automated Data Processing (ADP) equipment for maintaining records and producing reports, may submit these ADP reports, provided that such reports:

- (1) are consistent with the recordkeeping requirements of these regulations; and
- (2) provide the information in the form and manner required by the Division.

Where magnetic tapes, diskettes, microfilms, or other ADP-produced reports are submitted in lieu of written reports, a representative of the submitting organization shall certify in accordance with subsections (d)(4) and (5) below, that these ADP reports are the actual records or were compiled from the actual records of the program participant.

(c) Except as provided in subsection (b) above, reports, notices, and claims, and applicable supporting data shall be accurate, complete, and typed or legibly handwritten in English.

(d) All reports and claims to support payments to or from the Division, and all other reports necessary for the Division to carry out its duties and responsibilities as required by law shall contain all of the following information:

- (1) The full name, address, and identification number of the entity preparing the report; and

(A) For recycling centers, dropoff or collection programs, community service programs and processors, the identification number shall be the certification number designated by the Division.

(B) For all other persons, the identification number shall be the Seller's Permit Number as designated by the state pursuant to Revenue and Taxation Code Sections 6066 and 6067.

(C) If an entity preparing the report has no certification number or Seller's Permit Number, an identification number shall be obtained from the Division upon written request.

- (2) The name and phone number of a contact person for purposes of the report; and

- (3) The reporting period and date of preparation of the report; and

(4) The signature and title of the representative of the entity authorized to prepare the report. The signature block shall state that the information in the report or claim is correct to the best knowledge of the person submitting the report or claim; and

- (5) The date and place of the signing of the claim or report.

(e) Failure to comply with any provision of this section, or other reporting requirement of this chapter, shall be grounds for the Division to reject the report. Any such rejection shall not extend any applicable time period.

(f) In lieu of submitting multiple shipping reports to document transactions between affiliated recycling centers or the receipt of material by a recycling center or processor from a dropoff or collection program, community service program, or curbside program, certified processors and certified recycling centers may apply in writing to the Division for permission to file consolidated shipping reports.

(1) The Division shall approve or deny such requests within 45 days of receipt of the application; and, if the request is approved, a consolidated reporting number shall be issued to the applicant.

(2) The Division shall deny an application to file consolidated shipping reports if the recycling center or processor is not operating in compliance with Section 14538 or Section 14539 of the Act, as applicable.

(3) Upon obtaining written authorization from the Division, processors and recycling centers may consolidate their reporting records onto one shipping report for each delivery to another recycling center or processor and attach a detailed listing of each location's recycling activity for transactions from the effective date of the authorization forward.

(A) Processors and recycling centers shall retain copies of consolidated shipping reports and all supporting documentation.

(B) Consolidated shipping reports shall consist of the following general information, delivery-specific information and information related to totals (see Figure 8 for example):

1. Name and address of the receiving certified administrative office,
2. Consolidated shipping report number,
3. Material type,
4. Shipping report (DR-6) number,
5. Number of shipments,
6. Shipper's certification number,
7. Receipt and log dates, if applicable,
8. Received weight,
9. Redemption weight,
10. Adjusted redemption weight,
11. Refund value,
12. Processing payment,
13. Total payments,
14. For glass received from curbside programs, the glass being shipped shall be identified as color-sorted (CS), or mixed (MX) color.
15. Total received weight,
16. Total redemption weight claimed,
17. Total adjusted redemption weight,
18. Total refund value,
19. Total processing payment, and
20. Total payments.

(4) The Division shall revoke authorization to file consolidated shipping reports if the recycling center or processor is not operating in compliance with Section 14538 or Section 14539 of the Act, as applicable.

Authority Section 11342.2, Government Code; Sections: 14530.5(b) and 14536, Public Resources Code. Reference: Sections 14511.7, 14518.5, 14538, 14539, 14541, 14549, 14549.1, 14550, 14551, 14552 and 14553, 19520, 19521, and 19522, Public Resources Code; Sections 6066 and 6067, Revenue and Taxation Code.

SUBCHAPTER 3. MANUFACTURERS

Article 2. Accounting and Reporting Requirements for Container Manufacturers

§2227. REPORTING

(a) Each glass container manufacturer shall prepare and submit a report to the Division within 45 days after the end of each month specifying the total tons of new glass food, drink, and beverage containers made in California by that glass container manufacturer and the tons of

postfilled glass used in the manufacturing of those new containers. Glass container manufacturers may use the *Report of Recycled Glass Content* (April 2003), or use a modified or different form to submit the required information. The report shall be prepared in accordance with the general requirements for reporting contained in section 2090 of these regulations. To be considered complete, the report shall include the following information:

- (1) The reporting period;
- (2) The name of the reporting facility;
- (3) The mailing address;
- (4) The contact person;
- (5) The contact telephone number;
- (6) The total tons of postfilled cullet used;
- (7) The tons of mixed-color cullet used;
- (8) The tons of color-sorted cullet used;
- (9) The tonnage produced of food, drink and beverage containers;
- (10) The tonnage produced of all other products;
- (11) The signature of the person completing the report, including their title, and date.

(b) All reports shall be subject to audit by the Division, and the Division may require substantiation of the information contained therein.

(c) Glass container manufacturers are prohibited from knowingly reporting non-postfilled glass as postfilled glass.

(d) For purposes of this section and sections 2250, 2260, and 2265 "glass container manufacturer" means the corporate entity that owns the individual glass-making plant(s).

(e) The term "cullet" is defined in Section 14509.3 of the Act for purposes of this section and sections 2250, 2260, and 2265.

Authority: Section 11342.2, Government Code; Sections 14530.5 and 14536, Public Resources Code. Reference: Sections 14549, 14552, and 14553, Public Resources Code.

Article 4 Glass Container Minimum Content

§2250 CALCULATIONS

For each glass container manufacturer in California the Division shall perform the following calculations:

(a) The Division shall calculate the percentage of postfilled glass used annually, in the aggregate, by a glass container manufacturer to manufacture new glass food, drink, and beverage containers in California. In determining this percentage, the numerator shall be the aggregate tons of postfilled glass used by that glass container manufacturer to manufacture new containers, and the denominator shall be the aggregate tons of new glass, food, drink, or beverage containers made in California by that glass container manufacturer.

(b) The Division shall calculate the percentage of mixed color cullet in the postfilled glass used by a glass container manufacturer to manufacture new glass food, drink, and beverage containers in California. In determining this percentage, the numerator shall be the aggregate tons of mixed color cullet used by that glass container manufacturer to manufacture new containers and the denominator shall be the aggregate tons of postfilled glass used.

Authority: Section 11342.2, Government Code; Sections 14530.5 and 14536, Public Resources Code. Reference: Section 14549, Public Resources Code.

§2260 REQUEST FOR WAIVER OR REDUCTION

(a) Manufacturers of glass containers should notify the Division as soon as possible upon anticipating the inability to meet the minimum content requirements specified in statute.

(b) A reduction or waiver may be granted to a glass container manufacturer upon a determination by the Division that the manufacturer was unable to meet the minimum requirements because there was a lack of available cullet, or it was technologically infeasible.

(c)(1) A glass container manufacturer may submit a written request to the Division for waiver or reduction of the minimum percentage requirements contained in Section 14549(b) of the Public Resources Code pursuant to the requirements contained in this section. A glass container manufacturer that does not formally request a waiver or reduction in accordance with these regulations shall not be entitled to a waiver or reduction.

(2) The written request for waiver or reduction must be received by the Division no later than February 28 of the year immediately following the calendar year for which the reduction or waiver is being sought, and shall include:

(A) A statement with the specific reason(s) for failure to meet the minimum percentage requirements, including verification of best-faith efforts to use as much cullet as feasible.

(B) Evidence supporting the glass container manufacturer's reasons for failure to use sufficient cullet. The evidence shall include sufficient detail for the Division to reasonably determine the availability of cullet and/or technological infeasibility.

(d) The Division may consider, but is not limited to, the following criteria to determine whether the use of cullet at the required minimum content was technologically infeasible:

- (1) Records of the glass container manufacturer's attempts to overcome the claimed technological barrier by adjusting cullet processing, furnace chemistry, raw material delivery or other means.
- (2) Prevailing manufacturing standards, including the most recently published American Society for Testing and Materials (ASTM) standard specifications for using cullet in the manufacture of glass containers.
- (3) Detailed documentation demonstrating a glass container manufacturer's necessity for minimum quality specifications that are more restrictive than the applicable standards published by ASTM, including a lower tolerance for non-glass contaminants.
- (4) Evidence the cullet failed to meet minimum quality specifications published by ASTM or required by the glass container manufacturer, including documentation of the amount and recurrence of non-glass contaminants found in cullet shipments. This includes results of chemical and other tests using scientifically valid methods for sampling and measurement, such as those developed by ASTM.
- (5) Any unique manufacturing characteristics that may have precluded the glass container manufacturer from using sufficient cullet.
- (6) Compliance with nuisance, land-use, or other environmental laws that impact the ability of the glass container manufacturer to comply with the minimum content requirements.

(e) For purposes of this section, "availability of cullet" will be measured by the following criteria: If statewide annual container cullet used by container and fiberglass manufacturers in California is greater than or equal to 100 percent of the amount of glass collected through the redemption system, then manufacturers are presumed to have fulfilled their recycled-content obligation.

- (1) The statewide container cullet tonnage used by container and fiberglass manufacturers will be based on monthly container manufacturer *Reports of Recycled Glass Content* and annual *Fiberglass Minimum Content Reports*. The total glass collected through the redemption system will be based on the annual weight of glass purchased by Beneficiating Processors, as reported in the monthly *Scrap Value Survey*, excluding purchases from other Beneficiating Processors.
- (2) In its evaluation, the Division will average the annual cullet collected and used during the most recent three calendar years. For container manufacturers, the Division will subtract from the total amount used the estimated plate glass used annually by the fiberglass industry.
- (3) If cullet used is at least 100 percent of cullet collected as described above, the Division may grant glass container or fiberglass manufacturers a reduction in the required percentage equal to the actual percentage used.
- (4) If cullet used is less than 100 percent of cullet collected as described above, the Division may nevertheless grant a waiver or reduction for cullet unavailability on a case-by-case basis. In such cases, the Division may require a manufacturer to provide additional documentation, including but not limited to:
 - (A) Letters, memos, logbooks or other records detailing the glass container manufacturer's efforts to obtain sufficient cullet, including names and addresses of cullet suppliers or processors, dates of contact, and prices offered for different grades and colors of cullet.
 - (B) Records of all cullet purchases during the year, and any offers of cullet rejected by the manufacturer, and reasons for rejection.
 - (C) The tonnage of each color of cullet stored by the glass container manufacturer and unused from the year(s) prior to the calendar year for which the reduction or waiver is being sought.
 - (D) Letters from potential suppliers indicating no additional cullet was available for purchase by the manufacturer.
 - (E) Records from suppliers indicating the percentage of material "lost" during beneficiation, to account for non-glass contaminants eliminated during final processing.
 - (F) The cost of raw materials used by the manufacturer.
 - (G) The cost of cullet purchased by the manufacturer, by color.
 - (H) The average transportation costs for cullet and raw materials delivered to the glass container manufacturer.
 - (I) Copies of contracts that may affect a manufacturer's purchases of cullet.
- (5) The Division also may consider, but is not limited to, the following additional factors to determine whether there was a lack of available cullet:
 - (A) The average prices for color-sorted and mixed-color cullet delivered to container manufacturers in California.
 - (B) The percentage of cullet used by other glass container and fiberglass manufacturers in California.
 - (C) The distances from potential sources of cullet to the glass container manufacturer's facilities.
 - (D) Records of actual plate glass purchases by manufacturers, to adjust the Division's estimate of statewide plate cullet used.

- (E) Records of cullet sales by processors to any end-users, including sales for non-container uses, and to buyers outside California.
- (F) Records of cullet purchased by California processors from recycling programs outside California.

Authority: Section 11342.2, Government Code; Sections 14530.5 and 14536, Public Resources Code. Reference: Section 14549, Public Resources Code.

§2265 DETERMINATION OF PENALTIES

In determining the penalties for noncompliance, the Division may consider factors including, but not limited to:

- (a) The percentage of cullet actually used by the glass container manufacturer in the year for which minimum required percentages were not achieved.
- (b) The number and location of California plants operated by the glass container manufacturer and the volume of product produced.
- (c) Benefits to the glass container manufacturer associated with using less than the minimum percentage requirements.
- (d) Unique manufacturing characteristics that may have contributed to the glass container manufacturer's failure to achieve the applicable minimum percentage.

Authority: Section 11342.2, Government Code; Sections 14530.5 and 14536, Public Resources Code. Reference: Section 14549, Public Resources Code.

SUBCHAPTER 5. PROCESSORS.

Article 3. Accounting and Reporting Requirements

§2420. RECORDKEEPING

[add paragraphs:]

(i) Records of glass purchases by Beneficiating Processors. Beneficiating Processors shall maintain records of glass purchases from all sellers.

- (1) Purchase records shall indicate the tons and price of glass purchased in the following categories:
 - (A) Mixed-color container glass
 - (B) Color-sorted container glass
 - (C) Postconsumer plate glass
 - (D) Any other glass
- (2) Purchase records shall indicate whether the seller was located in California or outside the state.

(j) Records of cullet sales to end-users. Beneficiating Processors shall maintain records of cullet sales to all end-users.

- (1) Sales records shall indicate the tons and price of color-sorted container cullet, mixed-color container cullet, postconsumer plate cullet, and any other non-container cullet sold for the following categories of end-use:
 - (A) Food and beverage containers
 - (B) Fiberglass building insulation

- (C) Construction
- (D) Alternative Daily Cover at landfills
- (E) Other uses
- (2) Sales records shall indicate whether the end-user was located in California or outside the state.

§2425 REPORTING

[add paragraph:]

(i) Beneficiating Processors shall provide summary data of the records specified in Section 2420(i) and (j) in a format prescribed by the Division, within 30 days after the end of each calendar quarter.

SUBCHAPTER 13. FIBERGLASS RECYCLED CONTENT

Article 1. Accounting and Reporting Requirements

§2990. RECORDKEEPING.

A fiberglass manufacturer shall maintain records and receipts of all transactions regarding the purchase of cullet used in the manufacture of fiberglass, and any sales of fiberglass in the state. Such records shall be maintained in accordance with the general requirements set forth in section 2085 of these regulations.

Authority: Section 11342.2, Government Code; Reference: Sections 19511, 19520, 19521, Public Resources Code.

§2993 REPORTING

(a) Each manufacturer producing or selling fiberglass building insulation in California shall prepare and submit a report to the Division on or before March 1 of each year which shall include the following information:

- (1) The reporting year;
- (2) The total tons of fiberglass building insulation produced by the manufacturer in California during the reporting year;
- (3) The total tons of (a) food, drink and beverage container cullet, and (b) all other cullet used during the reporting year by the manufacturer's California fiberglass manufacturing plants for the production of fiberglass building insulation;
- (4) The total tons of fiberglass building insulation produced during the reporting year at the manufacturer's plants outside of California that sold any amount in California;
- (5) The total tons of cullet used during the reporting year in the production of fiberglass building insulation by the manufacturer's out-of-state plants that sold any amount in California;
- (6) The total tons of fiberglass building insulation sold during the reporting year in California by the manufacturer, but produced outside California;
- (7) A completed, original affidavit which includes the following information:
 - (A) The printed name of the person completing the report;

(B) The company name;

(C) The signature and title of the person completing the report, and the date.

(b) Fiberglass manufacturers may use the *Fiberglass Minimum Content Report* (April 2003), or use a modified or different form to submit the required information. The report shall be prepared in accordance with the general requirements for reporting contained in section 2090 of these regulations.

(c) All reports shall be subject to audit by the Division, and the Division may require substantiation of the information contained therein.

(d) For purposes of this subchapter, "fiberglass manufacturer" shall mean the corporate entity that owns the individual fiberglass-making plant(s).

(e) The term "cullet" is defined in Section 19502 of the Public Resources Code for purposes of this subchapter.

Authority: Section 11342.2, Government Code; Reference: Sections 19511, 19520, 19521, Public Resources Code.

Article 2. Fiberglass Minimum Content

§2994 CALCULATION

For each manufacturer producing or selling fiberglass building insulation in California, the Division shall determine the recycled-content level achieved by the manufacturer during the reporting year by the following formula:

$$\frac{Cc + \frac{(Coc * Sic)}{Poc}}{Pc + Sic} = \text{_____} \%$$

Where:

Cc = The total tons of cullet used during the reporting year by the manufacturer's California fiberglass manufacturing plants for the production of fiberglass building insulation.

Coc = The total tons of cullet used during the reporting year in the production of fiberglass building insulation by the manufacturer's out-of-state plants that sold any amount in California.

Sic = The total tons of fiberglass building insulation sold during the reporting year in California by the manufacturer, but produced outside California.

Poc = The total tons of fiberglass building insulation produced during the reporting year at the manufacturer's plants outside of California that sold any amount in California.

Pc = The total tons of fiberglass building insulation produced by the manufacturer in California during the reporting year.

Authority: Section 11342.2, Government Code; Reference: Sections 19511, Public Resources Code.

§2995 REQUEST FOR WAIVER OR REDUCTION

(a) Manufacturers of fiberglass building insulation should notify the Division as soon as possible upon anticipating the inability to meet the minimum content requirements specified in statute.

(b) A fiberglass manufacturer may submit a written request to the Division for waiver or

reduction of the minimum percentage requirements contained in Section 19511(b) of the Public Resources Code.

(c) The requirements and criteria contained in Public Resources Code Section 2260 for glass container manufacturers shall also apply to fiberglass manufacturers, except where specified below.

- (1) In evaluating a fiberglass manufacturer's request for waiver or reduction pursuant to Public Resources Code Section 19522, the Division may consider the most recently published ASTM standard specifications for using cullet in the manufacture of fiberglass building insulation.
- (2) For fiberglass manufacturers, the Division will include non-container cullet defined in Public Resources Code Section 19502(a) in the calculation of statewide cullet used by container and fiberglass manufacturers.
- (3) The Division may consider the additional factors described in California Code of Regulations Section 2260(e)(5) as they apply to fiberglass manufacturers.

Authority: Section 11342.2, Government Code; Reference: Sections 19502, 19511, 19522, Public Resources Code.

§2997 DETERMINATION OF PENALTIES

In determining the penalties for noncompliance, the Division may consider factors including, but not limited to:

(a) The percentage of cullet actually used by the fiberglass manufacturer in the year for which minimum required percentages were not achieved.

(b) The number and location of California plants operated by the fiberglass manufacturer and the volume of product produced.

(c) Benefits to the fiberglass manufacturer associated with using less than the minimum percentage requirements.

(d) Unique manufacturing characteristics that may have contributed to the manufacturer's failure to achieve the applicable minimum percentage.

Authority: Section 11342.2, Government Code; Reference: Section 19535, Public Resources Code.